

MINUTES
BOARD OF SUPERVISORS
COUNTY OF YORK

Adjourned Meeting
December 9, 2003

6:00 p.m.

Meeting Convened. An Adjourned Meeting of the York County Board of Supervisors was called to order at 6:00 p.m., Tuesday, December 9, 2003, in the East Room, York Hall, by Chairman James S. Burgett.

Attendance. The following members of the Board of Supervisors were present: Sheila S. Noll, Donald E. Wiggins, James S. Burgett, and Thomas G. Shepperd, Jr.

Walter C. Zaremba was absent.

Also in attendance were James O. McReynolds, County Administrator; J. Mark Carter, Assistant County Administrator; and James E. Barnett, County Attorney.

WORK SESSION

CHESAPEAKE BAY PRESERVATION AREA REGULATIONS

Mr. Carter reviewed the requirement for the ordinance because of the requirements of the Chesapeake Bay Preservation Act, and he briefed the Board members on the discussions he has had with the development community since the Board's last regular meeting.

Mr. Zaremba arrived at 6:03 p.m.

Mr. Carter stated there are mandatory things the County must do to comply with the regulations, and there are certain optional things that can be done. Optional things include the offset from the RPA to accommodate construction and provide a usable yard area for the home developed on the property. Also, the ordinance includes the civil penalty clauses that are exactly like those of the Wetlands Regulations. The final optional item is a recommendation to notify residents of the RPA by posting signs. He noted the main concerns of the development community are the offset recommendation, how the County determines perennial flow, and how projects will be vested as to whether they have to use the new regulations versus the old. Mr. Carter then discussed the perennial flow determination issue using the state's five methods. He noted staff recommends that the language be clarified to state "State approved methods."

Mr. Wiggins asked for an explanation of the different methods.

Mrs. Anna Drake, Department of Environmental and Development Services, explained the five methods, ranging from taking photographs of the ditch and presenting it to staff, to the Fairfax method and North Carolina protocols that are the most difficult. She noted there are different ones for different needs.

Discussion followed regarding the cost to use a more difficult method, both by the individual homeowner or the developer as well as by the County. Also discussed was the process by which the County monitors the requirement.

Mrs. Noll stated it sounds like the simple method is for Joe Homeowner, and the more complicated would apply to commercial development.

Mrs. Drake concurred.

Mr. Shepperd noted he did not understand the appropriateness of which method to use. He asked how it is determined and is it optional to determine the appropriateness of the method.

Mr. McReynolds noted the guidance from the state includes specific parameters for use of each of the methods, and from that staff will help determine the most appropriate method.

Mrs. Drake indicated that even if there was a large development coming in, it could be that because of only one small stream on the property, the simple method could be used.

Discussion followed on the requirement to adopt the subject ordinance by December 31 and the authority of CBLAD to require the adoption.

Mr. Zaremba noted that Mr. Carter said that as currently stringent and demanding as the requirements of this statute are, the County already has most of the Chesapeake Bay requirements in place.

Mr. Carter explained that the County has had Chesapeake Bay Preservation Act (CBPA) regulations in effect since September of 1990, and has had most of the provisions on the books for over 13 years. He stated the reservoirs he mentioned are where the 200-foot versus 100-foot comes in. Prior to these newly mandated changes, the County was not required to include reservoirs in the CBPA, and they did not have an RPA assigned to their boundaries, and they now are. Already in place was the County's watershed protection overlay which requires a 200-foot buffer from the edge of the reservoir. The major change or requirement for the County now is the determination of the method to use in determining perennial streams. Mr. Carter noted that it is not known where all the perennial streams are, but everyone who comes in for a site plan will have to indicate if there is anything on the site that could remotely be a perennial stream. He stated that procedurally the County has in place the plan review provisions enabling that check to be made.

Discussion followed on the definition of an RPA and the types of bodies of water that can be called a perennial stream.

Mr. Carter stated the regulations have become more specific in stating what is allowable in the RPA. They also are more specific stating accessory structures cannot be given waivers as in the past. He noted that it was done administratively, but now the regulations state no disturbance is allowed in the RPA. Staff has recommended a provision in the ordinance that states there is still some administrative leeway for applicants who become subject to the regulations because of a perennial stream determination to go to the Board of Zoning/Subdivision Appeals.

Mr. Zaremba stated his concern that the localities get this colossal mandate from the General Assembly without the money to enforce it. He noted the requirements flow downward, and unfortunately the guy at the bottom is the citizen.

Mr. Carter stated staff talked also with the PHBA representatives regarding the vesting provisions, and they recommended the County look at the James City County ordinance recently adopted. Staff does not believe it is necessary because the County's Chesapeake Bay provisions are a part of the Zoning Ordinance where James City County's are not. Therefore, properties in York County will be vested in accordance with the provisions already a part of the Zoning Ordinance, and which are equal to those established by James City County. Mr. Carter then addressed the offset regulation, stating staff recommended that there be a requirement stating the yard requirements for that particular district must be observed in addition to the 100-foot buffer requirement. He stated the builders do not feel it is necessary, but they did agree to a 10-foot offset that would provide reasonable protection for construction activities around a building. Staff feels it would be good to provide additional usable area between the back face of the house and the RPA line for a patio or swing set. However, in consideration of the homebuilders' suggestion, staff looked at it again. In cases where a developer is not using a cluster development, the offset could be as much as 50 feet. He stated that if 20 feet is good enough in a cluster, then it is felt it is good enough for this, and staff recommends 20 feet, although the builders would like to see 10 feet. He then displayed a sign to be posted indicating that an area or parcel of property is in a RPA area and cannot be disturbed. Staff feels this is good notice to the property owner and the construction community, and they can be ordered and given away when the time comes. He stated that during construction, staff also feels there should be some construction fencing along the RPA line to help keep the area safe.

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Mrs. Noll stated she felt there is a need for some sort of additional buffer. She stated she couldn't imagine building a house and not having room for anything to be constructed in the back yard.

Discussion followed on additional setback and use of RPA signs.

Chairman Burgett stated he could see at least the need for a 10-foot buffer. He stated he thought the 50 foot was excessive.

Mr. Carter noted that in some places if a house is set 10 feet away from the RPA line, chances are it will be more than that dimension because of the undulation of the RPA line.

Mr. Wiggins stated he felt that any more than 10 feet would be excessive.

Mrs. Noll stated she would agree to 20 feet.

After further discussion, the Board by consensus agreed to a 10-foot buffer and some language added about the RPA notification signs.

Mr. Carter then reviewed the enforcement and penalty provisions.

PROPERTY MAINTENANCE CODE

Mr. McReynolds stated staff would like to go over the Board's options under the state code and seek guidance as to how the Board wants to proceed.

Mr. Carter provided some background information as to why staff is looking at this issue. The property maintenance code is optional with the exception of some provisions dealing with safety related issues. If the Board decides to go with it, it must be considered on a County-wide basis for all types of structures. The major option is to pick and choose which provisions of the code to adopt and enforce. He noted the memorandum provided the Board contains a summarized list of the requirements staff feels the Board should consider. He stated the Board has talked about unsafe buildings, but the building official's hands are tied by the code that is now in force. Currently, staff can deal with it only if it is unsafe and is a hazard to the public. This proposal would allow the Board to address things of a more aesthetic nature. He stated he would like to review list and have the Board provide staff with those provisions it wishes to include in the ordinance.

After a brief discussion, the Board agreed to eliminate from consideration all that deals with the interior of a building.

Mr. Carter then reviewed the exterior provisions that could be placed in the ordinance.

Mr. Shepperd indicated he felt the ordinance should provide more exact definitions for some of the nebulous terms used, such as "good repair."

Mrs. Noll asked how the Board could further define what the terms mean if it adopts certain provisions of the code.

Mr. Barnett stated he will look into what others have done or see if there are any Attorney General opinions on this issue. He stated it is his understanding that the Board either adopts certain sections or it doesn't. He suggested that as a side document the Board might consider adopting some sort of guidelines that a court could agree or disagree with without invalidating the County's ordinance.

Mr. John Hudgins, Director of Environmental and Development Services, stated most of the code is subjective. He noted the other main point under this code is that it requires certification of building maintenance code officials, so it provides training for County personnel.

Chairman Burgett noted the personnel will be trained by the state, and the Board can come up with its own guidelines.

Mrs. Marianne Harris, Building Code Official, stated it was her understanding that the locality cannot adopt its own guidelines. She noted everything is subject to the building code, and appeal would be made to the Board of Building Code Appeals.

Mr. Shepperd noted the Board then cannot define "good repair."

Mrs. Harris stated if paint is peeling, it is not in good repair. If the drain spout is hanging down, it is not in good repair. She stated the interpretation of terms is about being reasonable.

Mr. Barnett indicated that in terms of the ordinance text, the actual language from the state code must be used. With the County's zoning ordinance interpretations are made by the zoning administrator, and this could be the way this ordinance will work. He stated he felt some guidelines for the staff to use could be developed, and it would possibly help the Board's position in court that there were guidelines, which the court could either uphold or throw out.

Mrs. Noll asked how the ordinance would handle residents of limited means.

Chairman Burgett noted that it could be a problem if the neighborhood complains.

Mr. McReynolds indicated that the County currently has a section in the budget to help repair housing for low and moderate income families. He suggested the Board look at what might be needed in the next budget cycle in assisting those who might need it.

Mr. Zaremba stated he feels something is wrong about putting an ordinance in effect if the County has no way of enforcing it. He asked where the ordinance draws the line.

Mr. McReynolds indicated there will be many judgments made.

Mr. Shepperd noted he has some serious reservations about this proposal. He stated he thinks if the citizens wake up tomorrow to see that the yard police have arrived, they will rise up in arms. He stated the Board is trying to fix Route 17, and it looks like it has to adopt guidelines that cover the whole county to do so. Mr. Shepperd stated he would like the Board to go to the General Assembly and ask them to give York County some special permission to apply the rules only to Route 17 or to certain areas.

Mr. Wiggins questioned why the ordinance should be for Route 17 only.

Mr. Shepperd stated the Board wants it to apply to certain areas, but not the entire county.

Mr. Wiggins stated that would not help with the problem of the shack sitting next door to a \$500,000 home, and the County is faced with such a problem.

Mr. Shepperd argued that people have the right to own property and live on it without being harassed. The Board wants to fix the County's main street of Route 17. He noted the rules of a homeowners' association are not this strict, and he is very concerned with this application. Mr. Shepperd stated if the Board wants to fix certain areas, then it should go to General Assembly and ask for special dispensation.

Mrs. Noll stated she also feels uncomfortable with some of this, but she understands the Board is trying to improve its main arteries. Unfortunately, the Board cannot just adopt the regulations to cover a certain area or just for commercial property. She asked what the Board's chances would be of going to the General Assembly and asking for a specific district.

Mr. Barnett stated it was hard to predict, and he hasn't seen legislation presented to the General Assembly like this to have any kind of history. He noted it was always worth a try, and he would draft something if that was the Board's wish.

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Mr. Zaremba stated if the Board goes to the General Assembly, it is in effect killing the program. He noted he empathized with both sides of the argument. He asked if the County has any clout now to send out code enforcement.

Mr. Carter stated current ordinances contain only provisions that deal with grass and weeds and trash and debris that accumulates.

Chairman Burgett indicated the County has a problem, and this proposal is an attempt to solve it. Everyone drives by the abandoned gas stations every day. He stated he would like to see the commercial end policed, but Mr. Wiggins is right in that something needs to be done with some residential properties also.

Mr. Zaremba noted that he feels the Board would do a large number of citizens a disservice by saying the Board's interest is only in the commercial corridor.

Mr. Shepperd stated he agreed that the Board is concerned about that, but in the older sections of the County, he didn't know if the homeowners would be able to afford what they would need to do to make their homes legal according to this proposal. He stated if the Board wants to make provisions about abandoned homes, he would agree to try for that.

Discussion followed concerning enforcement and doing a citizen survey.

Mr. McReynolds pointed out there is no way of going half way in terms of enforcement. From a staffing point of view, he stated it is a black and white issue because there will be just as many complaints concerning one of the areas as with all of them.

After further discussion, the Board agreed to go forward and ask the General Assembly for support to include all or part of the jurisdiction in an ordinance regarding property maintenance regulations.

Meeting Adjourned. At 7:52 p.m. Chairman Burgett declared the meeting be adjourned sine die.

James O. McReynolds, Clerk
York County Board of Supervisors

James S. Burgett, Chairman
York County Board of Supervisors